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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1962

No. 19

UNITED STATES OF AMERICA, *Appellee*,

vs.

CHARLES PAUL, *Director of Agriculture of the State of California*, AND STANLEY MOSK, *Attorney General, State of California, Appellants*.

On Appeal from the United States District Court for the Northern District of California, Southern Division

BRIEF OF THE STATE OF NEVADA AS AMICUS CURIAE

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August 25, 1962

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BRIEF OF THE STATE OF NEVADA AS AMICUS CURIAE

The State of Nevada files this brief as amicus curiae under the provisions of Rule 42 of the Rules of the Supreme Court of the United States. Consent to the filing of this brief need not be had under the provisions of Section 4 of said Rule 42.

INTEREST OF THE STATE OF NEVADA

In 1955, the State of Nevada enacted legislation regulating the stabilization and marketing of fluid milk and fluid cream (Nevada Revised Statutes, Sections 584.325 to 584.690 inclusive). Four years later, in 1959, the Nevada Stabilization and

Marketing Act was amended to provide for the determination and fixing of minimum prices for the sale of fluid milk and fluid cream (Nevada Revised Statutes, 584.568). This act, with the minimum price provisions, is still in force and effect.

The problem in the State of California which is the subject of this appeal is of substantial interest to the State of Nevada. The legislature of the State of Nevada has declared the production and distribution of milk to be a business affected with a public interest. The State of Nevada has chosen to regulate the production and distribution of milk in the exercise of its police power to protect the health and welfare of its citizens (Nevada Revised Statutes, Sections 584.390, 584.395). The State of California has made similar declarations of fact and policy and has likewise acted in the exercise of its police power (California Agricultural Code, Sections 4200, 4201).

There are no decisions in the highest court of the State of Nevada interpreting or construing the Nevada Stabilization and Marketing Act. It is worthy of note that for a period of four years, from 1955 to 1959, there were no pricing provisions in the Nevada Stabilization and Marketing Act. It must also be noted that the 1959 amendment (Nevada Revised Statutes, Section 584.568) made the determination and fixing of minimum sales prices mandatory, rather than optional, in each stabilization and marketing plan. Clearly, the Nevada legislature believed it necessary to establish minimum prices for the sale of milk.

The State of Nevada has divided milk into three classifications according to usage. Milk which is sold for human consumption as market milk is identified as Class I (Nevada Revised Statutes, Section 584.480). This is the same class of milk as that involved in the sales in California which were the subject of the decision of the District Court in this action below. In 1961, the State of Nevada produced a total of 2,742,209 pounds of butterfat used

in Class I consumption. A total of 208,979 pounds of butterfat, amounting to 7.6 percent of Nevada production, was sold to Federal installations in Nevada during 1961.

If the decision of the three-judge District Court below is allowed to stand, the ultimate effect will be to impair the regulation of an important industry affecting the public health and welfare of the citizens of the State of Nevada. In the absence of the assertion of Federal police power, in this field, Nevada should be permitted to continue this essential regulation. This brief is filed at the request of the State Dairy Commission of the State of Nevada, acting by and through the Attorney General of the State of Nevada, to protect the dairy industry of the State of Nevada and to protect the health and welfare of the citizens of the State of Nevada.

ARGUMENT

It is the position of the State of Nevada that the judgment of the three-judge District Court is in error as conflicting with congressional policy and with the various decisions of the Supreme Court of the United States. The State of Nevada as amicus curiae is in full and complete agreement with the arguments presented by the State of California in this action. To repeat the arguments of the State of California would be redundant. The State of Nevada joins in such arguments without reiteration.

CONCLUSION

The State of Nevada requests the Court to decide that the State of California may constitutionally enforce both the minimum producer and minimum wholesale provisions of its milk stabilization act against distributors and producers selling fluid milk to the United States and to resolve the issues presented on this appeal

in favor of the State of California. The State of Oregon joins in such request and supports the position of the State of California.

Respectfully submitted,

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